IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1843 OF 2005

1.M/s.Sai Renewable Power Pvt.Ltd.
2.M.Appayya
3.M.Chandra Sekhara Rao ...Petitioners.
V/s.
1.M/s.Walchandnagar Industries Ltd.
2.The State of Maharashtra ...Respondents.

Rahul S. Kate for the Petitioners.
S.M.Oka for the Respondent No.1.
Ms.S.V.Gajare, A.P.P. for the State-Respondent.

CORAM: S.R.Dongaonkar,J.
DATE : 9th March, 2006.

P.C.:

1. Heard the learned counsels for the Parties, finally at the stage of admission.

2. The Petitioners have preferred this Petition under Section 482 of the Criminal Procedure Code and under Article 227 of the Constitution of India for challenging the order passed by J.M.F.C., Indapur dated 2nd July, 2005 in Criminal Case No.1117 of 2004 in which the learned Magistrate has directed the accused to remain present in Court as per the provisions of Section 205(2) of the Criminal Procedure Code and furnish their bail bonds on or before 6th August, 2005.

3. The short facts, which are needed to quote for the

disposal of this Petition are thus:-

> The Complainant-Respondent No.1 has filed the complaint under Sections 138 and 141 of the Negotiable Instruments Act. The details of the same are mentioned in this Petition. No need to go into details. Suffice, it to say that in this case, process was issued against the accused under Section 138 of the Negotiable Instruments Act. On the day of first appearance accused appeared through his counsel and filed application under the provisions of Section 205 of Criminal Procedure Code. It seems that by the order the accused are exempted for their first appearance but after giving oral direction to the counsel of the accused, they did not remain present and furnish bail bond and therefore, by invoking the provisions of Section 205(2) of Criminal Procedure Code, they were directed to remain present and furnish bail bond.

4. The learned counsel for the Petitioners submitted that Accused Nos.2 and 3 are physically unable to appear before the Court and furnish bail bonds because of their illness and also due to the reasons stated in the Application. He has also submitted that they have

furnished their undertakings and are bound by the orders of the Court as well as they have also submitted to the Court that they would abide by the guide-lines issued by the Hon'ble High Court of Maharashtra in the case of **Bhaskar sen v. State of Maharashtra 2004(4) Maharashtra Law Journal** 1115.

5. The learned counsel for the Respondents have opposed this submission on factual as well as legal aspects.

6. On perusal of the record, it is impossible to believe that the accused Nos.2 and 3 are in such a physical state that they are unable to appear before the Court for furnishing their bail bonds. It is pertinent to note that they are in fact doing business and therefore, they must have been attending their work. He has relied on principles laid down in the case of **M/s. Bhaskar Industries Ltd v. M/s. Bhiwani Denim & Apparels Ltd. & Ors.** reported in 2001 All MR (Cri) 1961

7. Attendance in the Court for furnishing bail bond is discretionary direction issued by the learned Magistrate under section 205(2) of the Criminal Procedure Code and as such, there has to be specific and compulsory reason to allow the accused to be exempted from appearing in the

Court. Without which this Petition can not be allowed. The case referred by the learned counsel for the Petitioners is distinguishable on facts.

8. Hence, this Petition is dismissed. However, the accused are allowed to furnish bail bonds in the lower Court within a period of one month and thereafter, seek exemption from personal appearance.

(S.R.Dongaonkar, J.)